

§ 20.81

21 CFR Ch. I (4–1–04 Edition)

§ 20.81 Data and information previously disclosed to the public.

(a) Any Food and Drug Administration record that is otherwise exempt from public disclosure pursuant to subpart D of this part is available for public disclosure to the extent that it contains data or information that have previously been disclosed in a lawful manner to any member of the public, other than an employee or consultant or pursuant to other commercial arrangements with appropriate safeguards for secrecy.

(1) For purposes of this section, an individual shall be deemed to be a consultant only if disclosure of the information was necessary in order to perform that specific consulting service and the purpose of the disclosure was solely to obtain that service. The number of consultants who have received such information shall have been limited to the number reasonably needed to perform that particular consulting service.

(2) For purposes of this section, other commercial arrangements shall include licenses, contracts, and similar legal relationships between business associates.

(3) For purposes of this section, data and information disclosed to clinical investigators or members of institutional review committees, whether required by regulations of the Food and Drug Administration, or made voluntarily, if accompanied by appropriate safeguards to assure secrecy and otherwise in accordance with this section, are not deemed to have been previously disclosed to any member of the public within the meaning of paragraph (a) of this section.

(b) Any statement relating to prior public disclosure is subject to the False Reports to the Government Act, 18 U.S.C. 1001.

[42 FR 15616, Mar. 22, 1977, as amended at 54 FR 9038, Mar. 3, 1989; 59 FR 536, Jan. 5, 1994; 68 FR 25287, May 12, 2003]

§ 20.82 Discretionary disclosure by the Commissioner.

(a) Except as provided in paragraph (b) of this section, the Commissioner may, in his discretion, disclose part or all of any Food and Drug Administration record that is otherwise exempt

from disclosure pursuant to subpart D of this part. The Commissioner shall exercise his discretion to disclose such records whenever he determines that such disclosure is in the public interest, will promote the objectives of the act and the agency, and is consistent with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

(b) The Commissioner shall not make available for public disclosure any record that is:

(1) Exempt from public disclosure pursuant to § 20.61.

(2) Exempt from public disclosure pursuant to § 20.63.

(3) Prohibited from public disclosure pursuant to 21 U.S.C. 331(j), 42 U.S.C. 263g(d), 42 U.S.C. 263i, or 18 U.S.C. 1905.

(4) Contained in a Privacy Act Record System where disclosure would constitute a clearly unwarranted invasion of personal privacy or is otherwise in violation of 5 U.S.C. 552a(b), as applied in part 21, subpart G, of this chapter (restrictions on disclosure in the privacy regulations).

(c) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 20.21, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Commissioner to exercise his discretion to disclose any other record that is exempt from disclosure.

§ 20.83 Disclosure required by court order.

(a) Records of the Food and Drug Administration which the Commissioner has determined are not available for public disclosure, in the form of a regulation published or cross-referenced in this part, shall nevertheless be made available for public disclosure in compliance with a final court order requiring such disclosure.

(b) Where the Food and Drug Administration record ordered disclosed under paragraph (a) of this section is a record about an individual that is not available for public disclosure under